

## **REMARKS**

Claims 1-36 and 42-47 were pending prior to the filing of this Amendment. Claims 1, 6, 9, 21, and 27 have been amended herein, as discussed below. Claims 8, 15, 18, 20, 30-36, and 42-47 have been cancelled herein. New claim 54 has been added. The basis for new claim 54 may be found for example, on page 6, line 30 to page 7, line 15; Figures 3, 5, and 7A of the application as filed. No new matter is added thereby.

Claims 1-7, 9-14, 16-17, 19, 21-29, and 54 are now pending. Reconsideration of the application as amended, and in light of the remarks below is hereby requested.

The specification has been amended to correct an obvious error made in the description at page 8, line 26. As written, the passage stated R1 is *greater than* R2. However, it is clear from page 9, paragraph 1, Figure 10 and original claim 9 that R1 is less than R2.

Applicants address each of the objections and rejections in the order in which they appear in the Action.

### **I. Obviousness Type Double Patenting**

The present application stands provisionally rejected under the judicially created doctrine of obviousness type double patenting over the claims of US Patent Application No. 11/911,060. It is respectfully asserted that this obviousness type double patenting rejection is moot in light of applicants filing of a terminal disclaimer in US Patent Application 11/911,060 on July 13, 2010.

The terminal disclaimer in 11/911,060 disclaims any portion of a patent which would grant from that application which would extend beyond the expiry date of any patent which may issue from the present application. As the terminal disclaimer has been filed in the later filed of the two case, the risks which the judicially created doctrine were

intended to redress, i.e. a lengthened term of exclusivity from a later filed application, and the possibility of multiple suits by different parties from obvious variations of an claimed invention, have been addressed. As such, withdrawal of the obviousness-type double patenting rejection is justified and is hereby requested.

As pertaining to the prior filing of the terminal disclaimer, Applicants note MPEP 804.02 II and established case law findings of the Federal Circuit, in Quad Environmental Technologies v. Union Sanitary District, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991), to the effect that filing of a terminal disclaimer to obviate a rejection based on a non-statutory double patenting is not an admission of the propriety of the rejection. The filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.

## **II. Section 102 Rejections Overcome**

Claims 1, 3, 6, 11, 13, 15-36, and 42-47 have been rejected under 35 U.S.C. §102(b) as being anticipated by PCT Publication No. WO 03/095007 A2 (Davies *et al.*). Applicants respectfully traverse this rejection.

The amended claims are not anticipated by the disclosure in Davies relating to Figures 1, 2a and 3 (hereinafter “Figs. 1-3”). The device shown in Figs. 1-3 of Davies does not have *a finger-operable actuator member [which is] mounted for pivotal movement about a lower end of the actuator member...[and which has] at least one cam surface remote from the lower end*, where the term “lower end” is understood by reference to the requirement for *a dispensing member mounted for movement in an upward, dispensing direction*. Instead, in Figs. 1-3 of Davies each actuator member 20, 21 is mounted for pivotal movement about an upper end with respect to the upward, dispensing direction of the fluid discharge device 8.

Moreover, the amended claims also specify that *the drive section of the at least cam surface is a convex section*. In Figs. 1-3 of Davies the abutment surface 22, 23 of each actuator member 20, 21 is linear, not convex. This is another point of distinction in the claims.

Withdrawal of the rejection under 35 U.S.C. §102(b) is hereby requested.

### **III. Section 103(a) Rejection Overcome**

Claims 2, 4, 5, 7, 8-10, 12, and 14 have been rejected under 35 U.S.C. §103(a) as being unpatentable over PCT Publication No. WO 03/095007 A2 (Davies *et al.*). Applicants respectfully traverse these rejections.

The claims of the present application are not obvious adaptations of the device in Figs. 1-3 of Davies. In particular, the convex drive section on the pivoting actuator member makes the claimed device user-friendly since, if the drive section was linear as in Figs. 1-3 of Davies, the angle that the drive section forms with the longitudinal axis would become progressively steeper as the actuator member pivots in the actuating direction. This would cause an increase in the resistance to the actuator member pivoting in the actuating direction when the cam follower surface is on the drive section and the potential for inconsistent dispensing from the device.

However, this is not a problem that needs to be solved in the device of Figs. 1-3 in Davies because the angle that the linear abutment surface 22, 23 makes with the longitudinal axis becomes shallower as the actuator members 20, 21 move in the actuating direction.

Accordingly, the device in Figs. 1-3 of Davies provides no disclosure or motivation to use *inter alia* a convex drive section, as claimed. The claims therefore involve an inventive step over the device in Figs 1-3 of Davies.

Withdrawal of the obviousness rejection is hereby requested.

#### **IV. Claim Objections**

The Action objects to claims 2, 4, 5, 7, 12, 14, 30, and 35 for failing to provide proper antecedent basis for the claimed subject matter. Applicants request further explanation of this rejection. The objection to 30 and 35 is moot in light of the cancellation of those claims.

Claim 2 refers to a “first angle” a term recited in claim 1, and further defines the first angle as being from about 20 to 35 degrees. This merely quantifies the first angle. A similar situation exists for the quantifying of the “second angle” in Claim 6. This term is also found in claim 1. No antecedent basis issues are seen.

Claims 4 and 12 quantify the “minimum actuating force”, a term first provided in claim 1. The quantification in Newtons has proper antecedent basis.

Claim 5 refers to the “second angle”, a term defined in claim 1, and states that the second angle is in the range of about 40-60 degrees. There is no antecedent basis problem presented that Applicants can identify.

Claim 7 defines the transition, a term finding basis in claim 6, as having a radius of curvature, and defines a range on that radius. Claim 14 defines the second portion as having a radius of curvature, and describes this as being from about 15 to 40 mm. No issue of antecedent basis is present.

Applicants respectfully request clarification of the grounds for the objection so that they may respond appropriately, or hope that the above addresses the Examiner’s concerns with regard to the claim language at issue.

#### **V. Conclusion**

All claim rejections being addressed in full, Applicants respectfully request the withdrawal of the outstanding objections and rejections and the issuance of a Notice of Allowance. Should the Examiner have any questions regarding the foregoing, Applicants

Application No.: 10/598,464  
Attorney Docket No.: PB60781USw

respectfully request that the Examiner contact the undersigned, who can be reached at  
(919) 483-8022.

Respectfully submitted,

/James P. Riek/

---

James P. Riek  
Attorney for Applicant  
Reg. No. 39,009

Date: 14 December 2010  
Customer No. 23347  
GlaxoSmithKline  
Global Patents  
Five Moore Drive, P.O. Box 13398  
Research Triangle Park, NC 27709-3398  
Telephone: (919) 483-8022  
Facsimile: (919) 483-7988